

10
No. 2479

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. PAUL THOMPSON,

Appellant,

vs.

EMMETT IRRIGATION DISTRICT and W. H.
SHANE, N. B. BARNES and E. J. REY-
NOLDS, as Directors, and R. B. SHAW, as
Treasurer, of EMMETT IRRIGATION
DISTRICT,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Idaho,
Southern Division.

Filed

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F. D. Menckton,

Clerk.

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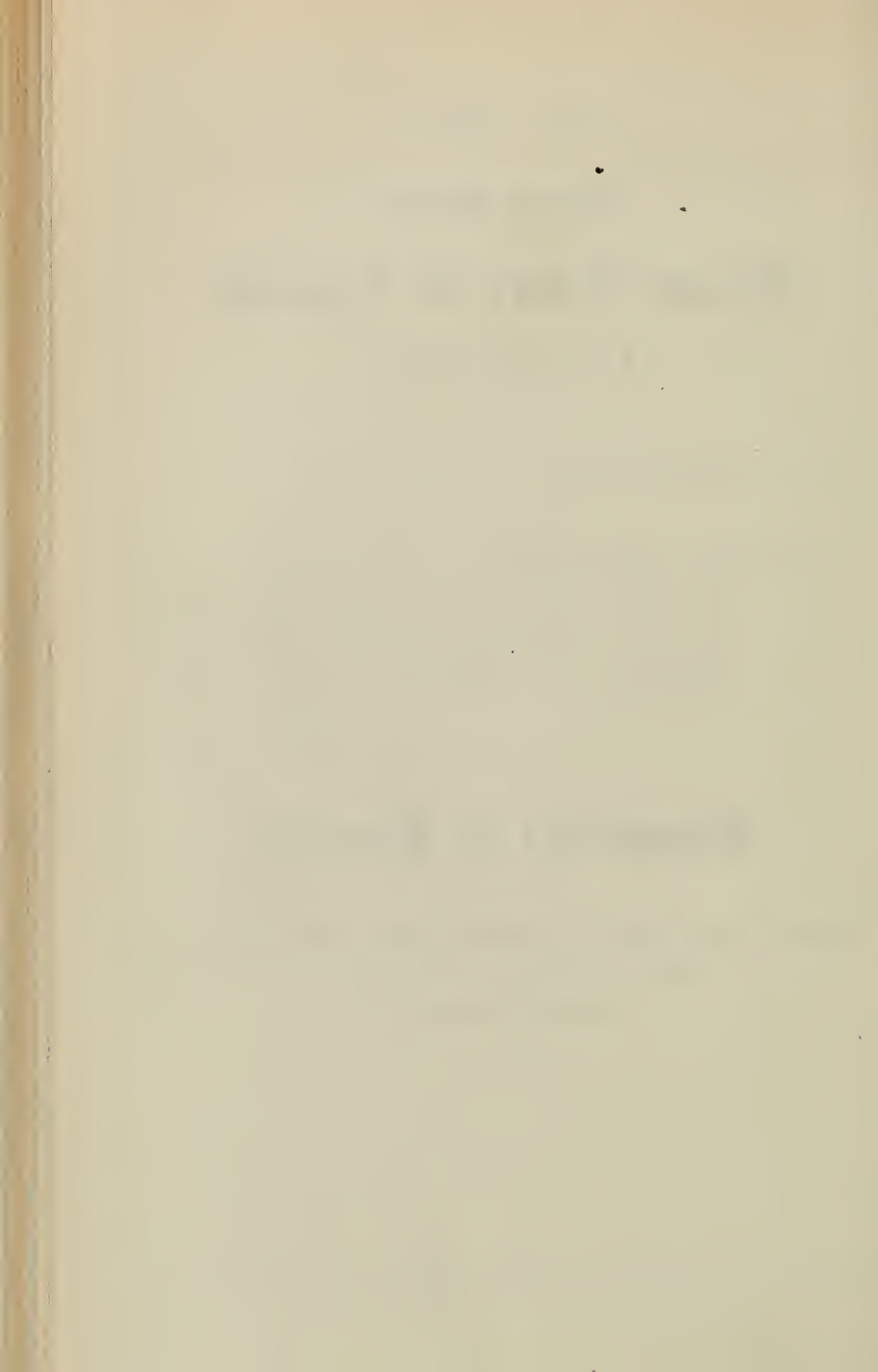
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys of Record.]

Messrs. RICHARDS & HAGA, McKEEN F. MORROW, Boise, Idaho,

Attorneys for Appellant.

Messrs. WOOD & DRISCOLL, Boise, Idaho, J. M. THOMPSON, Caldwell, Idaho,

Attorneys for Respondents.

*In the District Court of the United States, for the
District of Idaho, Southern Division.*

IN EQUITY—NO. —.

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal Corporation, W. H. SHANE, N. B. BARNES, and E. J. REYNOLDS, as Directors, and R. B. SHAW, as Treasurer of said EMMETT IRRIGATION DISTRICT,
Defendants.

Bill of Complaint.

To the Honorable, the Judge of the District Court of the United States for the District of Idaho, Southern Division:

J. Paul Thompson, a citizen of the State of Ohio, residing in the City of Cleveland, said State, brings this his Bill of Complaint against the Emmett Irrigation District, a municipal corporation organized under the irrigation district laws of the State of

Idaho and situated in Canyon County, said State, and W. H. Shane, N. B. Barnes, and E. J. Reynolds, as Directors of said Emmett Irrigation District, and R. B. Shaw, as Treasurer of said District, all residents and citizens of the State of Idaho residing in Canyon County, State of Idaho; and thereupon your orator complains and says:

I.

That your orator is a citizen and resident of the State of Ohio residing in the City of Cleveland, said State of Ohio. [1*]

II.

That the defendant Emmett Irrigation District is a municipal corporation organized and existing under the laws of the State of Idaho providing for the organization of irrigation districts.

III.

That the defendants W. H. Shane, N. B. Barnes and E. J. Reynolds are the duly elected, qualified and acting Directors of the said Emmett Irrigation District and constitute the Board of Directors of said District, and they are citizens and residents, and each of them is a citizen and resident of the State of Idaho, residing in Canyon County, said State.

IV.

That the defendant R. B. Shaw is the duly appointed, qualified and acting Treasurer of said Emmett Irrigation District and is a citizen of the State of Idaho residing in Canyon County, said State.

V.

That the matter in controversy in this suit, ex-

*Page-number appearing at foot of page of original certified Record.

clusive of interest and costs, exceeds the sum or value of \$3,000.00, and is wholly between citizens of different states.

VI.

Your orator further shows that the said Emmett Irrigation District was organized on or about the 13th day of September, 1910, under and pursuant to an act of the Legislature of the State of Idaho, entitled, "An act relating to irrigation districts and to provide for the organization thereof, [2] and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes, and for other and similar purposes," approved March 9th, 1903, and the acts amendatory thereof and supplemental thereto, the same being known as Title 14 of the Political Code of the State of Idaho; and that thereafter and on or about the 2d day of November, 1910, the Board of Directors of said District at a meeting thereof duly and legally held for such purpose, proceeded to determine the amount of money necessary to be raised for acquiring the works, water rights and property and carrying out the plans theretofore formulated in the manner provided by law for furnishing and supplying water for the irrigation of the lands within said Emmett Irrigation District; that said Board at said meeting determined that the sum of One Million One Hundred Thousand Dollars (\$1,100,000.00) was the amount of money necessary to be raised for acquiring the works and water rights and carrying out the plans so formulated and deemed necessary for irrigating the lands within said District; and there-

upon and on said 2d day of November, 1910, the said Board called a special election to be held in said District on December 3d, 1910, at which election there should be submitted to the electors of said District, possessing the qualifications prescribed by law, the question whether or not the bonds of said District in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) should be authorized; that notice of such election was given by posting and publication for the time and in the manner required by the statutes of Idaho relating to such matters, and at such election one hundred and eight (108) votes were cast, all of which were "Bonds—Yes," and no votes were cast "Bonds—No," and on the 6th day [3] of December, 1910, the said Board of Directors canvassed the returns of said election as aforesaid and declared the bonds of said District authorized for the sum and in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00).

VII.

And your orator further shows that on or about the 19th day of December, 1910, the Board of Directors of said District filed in the District Court of said Canyon County a petition praying in effect that all the proceedings of said Board from the organization of said District to and including the authorization and issuance of said bonds may be examined, approved and confirmed by the Court, and also that the proceedings of the Board of County Commissioners of Canyon County relating to the organization of said District may also be approved, examined and confirmed by the Court, and praying that

said District may be held and decreed legally organized and that the bonds authorized to be issued as aforesaid may be held and decreed to be the legal, valid and binding obligations of said District; that such proceedings were had on said petition and in the matter of the confirmation of the organization of said District and the authorization of said bonds, that thereafter and in the month of January, 1911, the said District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County made its findings of fact and conclusions of law and entered its judgment and decree approving and confirming each and all of the proceedings had and taken for the organization of said District, and adjudging the same to be duly organized, and that said bonds had been legally and properly authorized by the votes of the electors of said District at the [4] election held as aforesaid on the 3d day of December, 1910, and thereafter an appeal was taken from said judgment and decree to the Supreme Court of the State of Idaho, which Court on the 14th day of February, 1911, in a cause entitled "Emmett Irrigation District, a corporation, Respondent, vs. W. H. Shane, Appellant," affirmed the judgment entered by the said District Court and by its said decision (19 Idaho Reports, page 332, et seq.), approved and confirmed all the proceedings had and taken for the organization of said District and the authorization of said bonds.

VIII.

Your orator further shows that thereafter the said Emmett Irrigation District, acting by and through

its Board of Directors, caused the bonds of said District, authorized as aforesaid, to be issued, sold and delivered to the amount of Nine Hundred Thousand Dollars (\$900,000.00) or upwards, as your orator is informed and believes and so alleges the fact to be

IX.

Your orator further shows that the said bonds were coupon bonds negotiable in form and payable to bearer and were issued as provided in Section 2397 of the Revised Codes of Idaho, and were of the denominations of One Hundred Dollars (\$100.00), Five Hundred Dollars (\$500.00), and One Thousand Dollars (\$1,000.00), respectively, and, except as to number, amount and date of maturity, were identical in form and of like tenor and effect, and were in words and figures substantially as follows, to wit: [5]

“UNITED STATES OF AMERICA.

STATE OF IDAHO.

COUNTY OF CANYON.

\$——

EMMETT IRRIGATION DISTRICT.

Number ——

First Issue.

Six Per Cent Municipal Irrigation District Bond.

Series No. 1 —— Year Bond.

KNOW ALL MEN BY THESE PRESENTS:
That the Emmett Irrigation District, a municipal corporation located in the County of Canyon, State of Idaho, for value received, acknowledges itself to owe and hereby promises to pay to the bearer hereof the sum of —— DOLLARS (\$——) on the First day of January, A. D. 19——, together with interest thereon from the date hereof until paid at the rate

of six per cent (6%) per annum, interest payable semi-annually on the first days of January and July in each year upon presentation of the annexed interest coupons as they severally become due. Both principal and interest are payable in lawful money of the United States of America at the office of the Treasurer of Emmett Irrigation District in the County of Canyon in the State of Idaho, or, at the option of the holder hereof, at the Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois. This bond is one of a series of bonds aggregating One Million One Hundred Thousand Dollars (\$1,100,000.00) in amount and issued by the undersigned by authority of an act of the Legislature of the State of Idaho entitled "An Act relating to irrigation districts and to provide for the organization thereof and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes, and for other and similar purposes," approved March 9th, 1903, together with acts amendatory thereto and supplemental thereto, the same being known as "Title 14 of the Political Code of the State of Idaho," entitled "Irrigation Districts." Said Series consisting of two hundred and sixty-two (262) bonds of the par value of One Thousand Dollars (\$1,000) each, numbered consecutively from M-1 to M-262, inclusive; sixteen hundred and forty-six (1646) bonds of the par value of Five Hundred Dollars (\$500) each, numbered consecutively from D-1 to D-1646, inclusive, and one hundred and fifty (150) bonds of the par value of One Hundred Dollars (\$100) each, num-

bered consecutively from C-1 to C-150, inclusive which are due and payable as follows: Fifty-five Thousand Dollars (\$55,000) in amount, being bonds numbered from D-1 to D-110, inclusive, on January 1st, 1922; Sixty-six Thousand Dollars (\$66,000) in amount, being bonds numbered from M-1 to M-7 inclusive, and from D-111 to D-228, inclusive, on January 1st, 1923; Seventy-seven Thousand Dollars (\$77,000) in amount, being bonds numbered from M-8 to M-17, inclusive, and from D-229 to D-362 inclusive, on January 1st, 1924; Eighty-eight Thousand Dollars (\$88,000) in amount, being bonds numbered from M-18 to M-32, inclusive, and [6] from D-363 to D-508, inclusive, on January 1st, 1925; Ninety-nine Thousand Dollars (\$99,000) in amount, being bonds numbered from M-33 to M-42, inclusive, and from D-509 to D-656, inclusive, and from C-1 to C-150, inclusive, on January 1st, 1926; One Hundred and Ten Thousand Dollars (\$110,000) in amount, being bonds numbered from M-43 to M-57 inclusive, and from D-657 to D-826, inclusive, on January 1st, 1927; One Hundred and Twenty-One Thousand Dollars (\$121,000) in amount, being bonds numbered from M-58 to M-92, inclusive, and from D-827 to D-998, inclusive, on January 1st, 1928; One Hundred Forty-three Thousand Dollars (\$143,000) in amount, being bonds numbered from M-93 to M-137, inclusive, and from D-999 to D-1194, inclusive, on January 1st, 1929; One Hundred Sixty-five Thousand Dollars (\$165,000) in amount, being bonds numbered from M-138 to M-192, inclusive, and from D-1195 to D-1414, inclusive, on January 1st

1930, and One Hundred Seventy-six Thousand Dollars (\$176,000) in amount, being bonds numbered from M-193 to M-262, inclusive, and from D-1415 to D-1646, inclusive, on January 1st, 1931. And it is hereby certified that all things required by law to be done in and about the organization of said District and the issuance of the said bonds have been done, have happened and have been performed, and that the issuance of this bond has been duly and legally authorized by vote of the electors of said District at a special election duly called and held in accordance with the provisions of the said Act and by resolution of its Board of Directors, and that all other acts, conditions and things required by the laws and constitution of the State of Idaho precedent to and in the issue and delivery of this bond have been done, have happened and have been performed, and that said bonds are the valid, binding and legal obligation of the said District; that all the real property included within said District is subject to the levy of an annual tax for the payment thereof.

IN WITNESS WHEREOF, the said Emmett Irrigation District has by virtue of the authority aforesaid caused this bond to be executed in its name by its President and Secretary and the seal of its Board of Directors to be affixed hereto this First day of January, A. D. 1911.

EMMETT IRRIGATION DISTRICT.

(Signed) By W. E. BELL,
President.

(Seal) Attest: HARRY S. WORTHMAN,
Secretary."

That to each of said bonds semi-annual interest coupons were attached, all of which were of like tenor and effect and identical in form, except as to date of maturity, amount, and the number of the bond to which they were attached; said coupons, [7] with the exceptions stated, being substantially in words and figures following, to wit:

“On the first day of ———, A. D. 19——, EMMETT IRRIGATION DISTRICT will pay to bearer at the office of the County Treasurer of Canyon County, Idaho, or at the option of the holder hereof at Fort Dearborn Trust and Savings Bank in the City of Chicago, Illinois, the sum of ——— Dollars in lawful money of the United States, being six months’ interest due that day on its Municipal Irrigation District Bond of January 1st, A. D. 1911.

Series No. 1, Issue No. 1.

No. ——. \$——.

HARRY S. WORTHMAN,
Secretary.”

X..

Your orator further shows that all of said bonds were signed by the President and Secretary of said Emmett Irrigation District, and the seal of the Board of Directors of said District affixed thereto, and that the interest coupons attached to said bonds were each and all signed by the Secretary of said District. And said bonds were thereupon issued and sold by said District in the manner in such cases made and provided by the laws of the State of Idaho, as your orator is informed and believes and so alleges the fact to be, and the proceeds thereof received and used by

said District in the purchase of irrigation works, water rights and property required or deemed necessary by the Board of Directors of said District for carrying out the plans formulated by said Board, as hereinbefore stated, for the purpose of furnishing water for irrigating the lands situated within the boundaries of said District.

XI.

Your orator further alleges and shows that relying upon the decision of the Supreme Court of the State of Idaho in the cause heretofore referred to, wherein the said Emmett [8] Irrigation District was respondent and the said W. H. Shane, appellant, reported in Volume 19, Idaho Reports, page 332, and the decision of the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County in said cause, holding, adjudging and decreeing said District legally organized and existing, and that said bonds had been legally authorized and were the valid and binding obligations of said District, and relying also upon the recitals contained in said bonds that the same had been issued in compliance with the laws of the State of Idaho and that all things required to make the same the legal, valid and binding obligations of said District had been done and had happened and been performed, and that all real property included within said District was subject to the levy of an annual tax for the payment thereof, and without notice or knowledge of any fact whatsoever impairing the validity of said bonds or any of them, your orator purchased prior to January 1st, 1914, for a valuable consideration the bonds of

said District issued as aforesaid, to the amount of One Hundred and One Thousand Dollars (\$101,000.00) and now is and ever since has been the owner and holder of said bonds, which said bonds are of the number and denomination following, to wit:

M-14, M-15, M-16, M-18, M-19, M-132, M-133, M-134, M-135, M-136, M-143, M-144, M-145, M-203, and M-232, total fifteen (15) bonds, each of the denomination of One Thousand Dollars (\$1,000.00), and D-63, D-64, D-65, D-66, D-111, D-112, D-120, D-121, D-139, D-140, D-141, D-142, D-150, D-151, D-152, D-153, D-154, D-174, D-175, D-176, D-177, D-178, D-179, D-180, D-246, D-261, D-268, D-279, D-280, D-283, D-284, D-285, D-286, D-287, D-288, D-307, D-310, D-311, D-312, D-318, D-319, D-361, D-408, D-409, D-410, D-411, D-412, D-416, D-417, D-418, D-481, D-482, D-483, D-484, D-485, D-486, D-487, D-488, D-489, D-490, D-500, D-501, D-502, D-503, D-504, D-519 to D-538, inclusive, D-569 to D-578, inclusive, D-594, D-599, D-644, D-645, [9] D-651, D-652, D-653, D-654, D-655, D-656, D-673, D-674, D-675, D-676, D-717 to D-726, inclusive, D-742, D-743, D-780, D-783, D-784, D-785, D-786, D-787, D-788, D-801 to D-814, inclusive, D-833, D-1065, D-1066, D-1070, D-1071, D-1072, D-1278, D-1279, D-1280, D-1281, D-1305, D-1306, D-1307, D-1308, D-1309, D-1321, D-1332, D-1432, D-1598, D-1599, and D-1600 to D-1609, inclusive, total one hundred seventy-two (172) bonds, each of the denomination of Five Hundred Dollars (\$500.00).

XII.

Your orator further alleges and shows that after the said District had sold, issued and delivered its said bonds, it determined the benefits which would accrue to each of the tracts or subdivisions of land from the purchase and construction of the irrigation works and paid for by the proceeds from the sale of said bonds, and said Board caused the cost of such works to be apportioned over each tract and subdivision of land in said District in proportion to the benefits received, all as provided in Section 2399 of the Revised Codes of Idaho as amended by Chapter 154 of the Session Laws of 1911 of the legislature of the State of Idaho, and said Board caused to be prepared a list of such apportionment or distribution containing a complete description of each subdivision or tract within said District, with the amount and rate per acre of the apportionment of such costs and the name of the owner thereof, together with all necessary maps, and the action of such Board in apportioning such benefits and the cost of such works to the several tracts of land in said District was thereafter and upon the petition of such Board, filed as required by law, duly approved and confirmed by the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County and the decree and judgment of said Court in said matter was entered on or about the — day of June, 1913, and no appeal was taken therefrom, and such decree has become final. [10]

XIII.

Your orator further alleges and shows that all in-

terest accruing on said bonds and evidenced by interest coupons thereto attached, as aforesaid, maturing January 1st and July 1st of each year, has been paid, except the interest coupons maturing January 1st, 1914, none of which have been paid, and the amount of such interest coupons attached to the bonds held by your orator and representing the interest due thereon on the 1st day of January, 1914, and remaining unpaid as aforesaid, aggregates the sum of Three Thousand Thirty Dollars (\$3,030.00).

XIV.

Your orator further shows that on or about the 22d day of October, 1913, at a regular adjourned meeting of the regular session of the Board of Directors of said District for the said month of October, the said Board of Directors levied an assessment against all the lands in said District, aggregating Fifty-five Thousand Dollars (\$55,000.00) for the payment of the interest maturing January 1st, 1914, and July 1st, 1914, upon the outstanding bonds of said District, including the bonds owned and held by your orator as aforesaid, which said levy and assessment was based upon the assessment of benefits as fixed by the said Board and confirmed by the said District Court in and for said Canyon County, as aforesaid, and the Secretary of said District thereupon prepared the assessment book and on or before November 1st, 1913, delivered the same to the Treasurer of the District. That the Treasurer of said District after receiving such assessment book from the Secretary, and within ten days thereafter, published notice for the time and in the manner required by

Chapter 139 of the Session Laws of 1911 of the State of Idaho, amending Section 2412 of the Idaho Revised [11] Codes, that said assessments were due and payable and would become delinquent at six o'clock P. M., on the third Monday of December next thereafter, and stated also therein the times and places at which payments of the assessment might be made, which notice was published for at least three times in a weekly paper published in the County in which said District is situated.

XV.

Your orator further shows that a large number of land owners and taxpayers in said Emmett Irrigation District have paid the taxes so levied and assessed against their said lands for the payment of interest on the bonds held by your orator and on other outstanding bonds of said Emmett Irrigation District, but the said District and the Treasurer and Board of Directors thereof have failed and neglected to use any of said money so collected to pay the interest on said bonds maturing January 1st, 1914, but have allowed default to be made in the payment of such interest and have failed and neglected to deposit with the said Fort Dearborn Trust and Savings Bank of Chicago, Illinois, any money to meet the interest maturing January 1st, 1914, on the bonds of said District, and on or about the 9th day of January, 1914, your orator caused to be presented to the Treasurer of said District for payment the interest coupons maturing January 1st, 1914, on his said bonds which said interest coupons aggregate, as heretofore stated, Three Thousand and Thirty Dollars (\$3,030.00), and

demanded payment thereof, but the said Treasurer, notwithstanding he had in his possession and in his custody and control the interest fund belonging to said District and collected as aforesaid from the taxpayers in said District for the purpose of [12] paying such interest, and which interest fund exceeded the amount of the coupons so presented for payment, declined to pay said coupons or any of them, and declined to use the money in such interest fund for the payment of said coupons, and the said District is now in default in the payment of said coupons, notwithstanding there is, as heretofore stated, in the possession of the Treasurer of said District and under his control sufficient money in the interest fund created for such purpose, with which to pay such coupons.

XVI.

Your orator further shows that for some reason unknown to your orator the said defendants declined to apply the moneys collected from the taxpayers of said District with which to pay said interest, to the payment of the interest due on said bonds or the coupons held by your orator, and unless enjoined and restrained by this Honorable Court the said defendants will either return such money to the persons from whom the same was collected or who paid the same to said Treasurer for the use of said interest fund, or will divert such money from the interest fund and use it for other purposes and will not apply it to the payment of interest or to any purpose for the benefit of the holders of said bonds.

XVII.

Your orator further alleges and shows upon his information and belief that default in payment will be made by the said defendants from time to time as each installment of interest on said bonds becomes due and payable. And your orator further shows that the principal of none of said bonds will become due or payable for many years to come; that said bonds mature serially, commencing the first day of January, 1922, and [13] extending over a period of ten years, as provided in Section 2397 of the Revised Codes of Idaho; that should your orator and other holders of said bonds be required to bring suits against said District as each installment of interest on said bonds becomes due, or as the principal of said bonds mature, numerous suits would be required; and if suit or action against the District be delayed until all of said bonds have become due and payable great and irreparable injury will be sustained by your orator and all holders of said bonds because of loss of interest and the uncertainties and unsettled conditions for many years and which will wholly destroy the market value of said bonds in the meantime; that it would be impossible for said District and the taxpayers therein to pay the whole of said bond issue and the accumulated interest thereon by one levy or assessment; that the same can only be paid in installments extending over a long period as provided in said bonds and as contemplated by the laws of the State of Idaho relating to such matters.

Your orator further shows that in order to avoid great loss and injury to your orator and other hold-

ers of said bonds, it is necessary to have said bonds decreed without delay, to be the legal and valid obligations of said District, and to have appropriate process for enforcing the payment of the interest and principal thereof, as the same become due from time to time. And your orator brings this suit for himself and all other holders of bonds of said District, who may desire to join in this proceeding and pay their proper proportion of the costs herein.

XVIII.

Your orator further alleges and shows upon his information and belief, that the said defendants, officials of said District, are counselling and advising taxpayers in said District not to pay their taxes levied for the purpose of paying [14] the interest on said bonds, and are making no effort to collect the payment of such taxes, but by their actions, conduct, and statements, are encouraging default in the payment of such taxes and are encouraging agitation and litigation against the bondholders, and fomenting a spirit of repudiation among the taxpayers, with a view of ultimately repudiating the payment of the bonds issued as aforesaid, and the interest thereon, including the coupons held by your orator, as aforesaid; and inviting suits by taxpayers of said District, attacking the validity of such bonds and the right of the District to pay such bonds or the interest thereon; that said defendants by their conduct and actions are greatly depreciating the market value of said bonds, and causing irreparable injury to your orator in the premises, and to other holders of the bonds of said District; that said defendants should in justice

and good conscience, as well as by the law, be held estopped from claiming any irregularities in the issuance, delivery or sale of said bonds that could or might invalidate the same in the hands of your orator, who is an innocent holder for value without notice or knowledge of any irregularity in the authorization, issuance or sale thereof, or in any matter whatsoever affecting the same; and your orator verily believes that unless the said defendants and each of them, are restrained and enjoined by this Honorable Court, they will not only divert or appropriate for other uses, or return to the taxpayers the moneys collected as aforesaid for the payment of interest on said bonds, but will allow default to be made in the steps and proceedings required to be taken by them in order to make legal or valid the sale of property in said District for delinquent taxes, and will permit the taxpayers who have paid no taxes to wholly escape the penalties of such default [15] and escape the payment of such taxes, and will institute or encourage proceedings to be instituted and actions to be commenced against the District attacking the validity of said bonds, all of which will render the bonds held by your orator, and the other bonds of said District issued as aforesaid, unsalable, and will greatly depreciate, if not entirely destroy, the market value thereof, and will result in numerous suits and long and protracted litigation and otherwise cause great and irreparable injury to your orator and other holders of the bonds of said District.

IN CONSIDERATION WHEREOF, and forasmuch as your orator is without adequate remedy, save

in a court of equity, your orator prays this Honorable Court to issue its writ of subpoena in due form of law, directed to the said Emmett Irrigation District and W. H. Shane, N. B. Barnes and E. J. Reynolds as Directors, and R. B. Shaw as Treasurer of said Emmett Irrigation District, defendants aforesaid, commanding them, and each of them, at a certain day and under a certain penalty to be therein specified, to appear before this Honorable Court to answer all and singular the matters and things hereinbefore set forth and complained of. But the answer to the bill of complaint need not be under oath, an answer under oath being hereby expressly waived.

And your orator prays that the said defendants, and each of them, may be restrained by injunction, preliminary until further hearing and perpetual thereafter, from diverting or otherwise appropriating or using for any purpose other than for the payment of interest on the bonds of said District the [16] moneys collected for or hereafter paid into the interest fund created for the payment of interest on the bonds of said District issued as aforesaid, and that said defendants be required to apply the money in said interest fund to the payment of the interest due on the bonds of said District, and that they, and each of them, be restrained and enjoined from fomenting, instigating, or encouraging by their acts, statements, conduct or otherwise, suits or actions to be instituted or commenced against the District or the holders of its bonds attacking the validity of the bonds or coupons issued as herein alleged, or enjoining the payment thereof or the payment of the in-

terest thereon, and from counselling, advising or in any manner encouraging default on the part of taxpayers in the payment of the taxes levied as herein alleged for the payment of interest on such bonds, and from doing any act or thing whatsoever which can or may depreciate the market value of said bonds and the interest coupons thereto attached, and that they be enjoined and restrained from allowing or permitting default to be made in the proceedings or any of the proceedings required to be taken or the acts to be performed under the laws of the State of Idaho in order to accomplish a valid sale of property in said District for delinquent taxes under the levy made by said Board for the payment of interest on the bonds of said District, and that they, and each of them, be enjoined from instituting any proceedings or making any defense to any suit or action instituted by others attacking the validity of the bonds held by your orator or of the coupons thereto attached; and that upon final hearing it may be adjudged and decreed that all the bonds of said District of the said issue and [17] series are legal and valid obligations of said District, and that payment thereof and of the interest coupons thereto attached must be made at the time and in the manner therein provided; and that your orator may have such other and further relief as the nature and circumstances

of the case may require, and as to this Court shall seem just and equitable.

J. H. RICHARDS,
OLIVER O. HAGA,
McKEEN F. MORROW,
Solicitors for Complainant.

Office and Postoffice Address: Idaho Building, Boise,
Idaho. [18]

United States of America,
District of Idaho,—ss.

Oliver O. Haga, being duly sworn, deposes and says: That he is one of the solicitors for J. Paul Thompson, plaintiff above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that he believes the same to be true; that he makes this affidavit and verification for and on behalf of said plaintiff for the reason that said plaintiff is absent from the said District, and this affiant further says that he has obtained his information relative to the matters set forth in said bill of complaint from official records and letters and other communications received concerning such matters from sources which he believes to be reliable.

OLIVER O. HAGA.

Subscribed and sworn to before me, this 10th day of March, 1914.

[Seal]

EDNA L. HICE,
Notary Public.

[Endorsed]: Filed March 10, 1914. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy. [19]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation, W. H. SHANE, N. B. BARNES,
and E. J. REYNOLDS, as Directors, and
R. B. SHAW, as Treasurer of said EMMETT
IRRIGATION DISTRICT,

Defendants.

Amendment to Bill.

Now, comes the plaintiff under leave of Court first had and obtained, and amends his Bill of Complaint herein as follows:

First: By striking out in Paragraph XVI of said bill in the first and second lines thereof the words, "for some reason unknown to your orator the said defendants," and inserting in lieu thereof the following: "the defendants wrongfully and without cause."

Second: By inserting a new paragraph to be numbered Paragraph XIX at the end of Paragraph XVIII and between said Paragraph XVIII and the prayer of said bill, to read as follows:

XIX.

Your orator further shows that the said defendants sometimes contend that a portion of the bonds, to wit: about one-fifth thereof, issued by said Emmett Irrigation District were issued or sold by

said District without any consideration, or any adequate consideration being paid therefor, but said defendants [20] do not state or pretend to know which of said bonds were so issued and do not identify them by number or otherwise so that any of the present holders of said bonds or any other person can learn or ascertain what bonds the said defendants refer to or contend were sold illegally or without adequate or any consideration having been paid therefor, and by reason of such general, vague and indefinite charges against the outstanding bonds of said District a cloud is thrown upon the validity or legality of all the bonds of said District so outstanding, including the bonds held by your orator, and the market value of all of such bonds is thereby greatly depreciated, if not entirely destroyed, but your orator is informed and believes and alleges the fact to be that such contentions or charges are wholly unfounded and untrue and are made only for the purpose of furnishing some excuse or pretense for not paying interest on any of the bonds issued by said District and for defaulting in the payment of such tax and for doing the other acts and things hereinbefore set forth and charged against the said defendants; that such false and unfounded charges, made as aforesaid by the officers of said District against the bonds so issued and outstanding, have been widely circulated and are frequently made and repeated, and as a result thereof defaults are being made by the taxpayers in the payment of the taxes levied for the payment of interest on said bonds, and the contentions, agitation and controversies over the

validity of said bonds and over the payment of such taxes are becoming general throughout said district and reports thereof are being circulated by taxpayers in and officers of said District among financial institutions and investors dealing in such bonds, and your orator verily believes [21] that numerous suits will be instituted by taxpayers in said District attacking the validity of such bonds and the validity of the assessments made for the payment of interest thereon, and statements have repeatedly been made by officers of said District and by some of the defendants herein that the District will not pay said bonds unless compelled to do so by a decree or judgment of Court; that one suit has already been instituted in the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County by one Clayton B. Knox against the said R. B. Shaw, as Treasurer of the said Emmett Irrigation District, for an order restraining said defendant, as Treasurer of said District, from collecting or attempting to collect any tax from said plaintiff for the payment of interest on said bonds, or any of them, or from advertising plaintiff's land for sale and from issuing any certificate of sale or tax deed thereto, because of the failure of plaintiff to pay such tax; that such suit is still pending before said Court undetermined and without any order or decree having been entered therein. And your orator believes that other suits by other taxpayers or other persons interested in said District or officers of said District will be instituted at any time involving the validity of such tax and the validity of said bonds,

and final judgments or decrees may be entered therein against said District or the officers thereof affecting the validity of said bonds and the collection of taxes for the payment of the interest or principal of said bonds, all without notice to or knowledge thereof by the holders of said bonds, who are widely scattered and who reside mostly, if not entirely, in other States than the State of Idaho and at such distances from the place where such suits will be brought that they could [22] not, except by the merest chance, learn such suits had been brought or were pending; and your orator further shows that because of the attitude of the said defendants towards the said bonds no adequate or proper defense to such suits will be made by said defendants.

J. PAUL THOMPSON,

By RICHARDS & HAGA,

McKEEN F. MORROW,

Solicitors for Complainant, Postoffice Address:
Idaho Building, Boise, Idaho.

United States of America,

District of Idaho,—ss.

Oliver O. Haga, being first duly sworn, deposes and says: That he is one of the solicitors for J. Paul Thompson, plaintiff above named; that he has read the foregoing amendment to plaintiff's Bill of Complaint and knows the contents thereof and believes the same to be true; that he makes this affidavit and verification for and on behalf of said complainant for the reason that said plaintiff is absent from said District; and this affiant further says that he has obtained his information relative to the matters set

forth in said amendment from official records and letters and other communications received concerning such matters, and from sources which he believes to be reliable.

OLIVER O. HAGA. [23]

Subscribed and sworn to before me, this 5th day of June, 1914.

[Seal]

EDNA L. HICE,
Notary Public.

Service of the foregoing amendment and receipt of copy thereof, admitted this 5th day of June, 1914.

WOOD & DRISCOLL,
Solicitors for Defendants.

[Endorsed]: Filed June 6th, 1914. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy. [24]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal Corporation, W. H. SHANE, N. B. BARNES and E. J. REYNOLDS, as Directors, and R. B. SHAW, as Treasurer of Said EMMETT IRRIGATION DISTRICT,

Defendants.

Motion to Dismiss Bill of Complaint as Amended.

To the Honorable, the Judge of the District Court of the United States, for the District of Idaho, Southern Division.

Come now the defendants herein, by Messrs.

Thompson & Buckner and by Messrs. Wood & Driscoll, their solicitors, and move to dismiss the bill of complaint as amended filed herein by the said plaintiff, for the following reasons, to wit:

I.

That the plaintiff has not, in and by said bill of complaint as amended, stated such a cause as does or ought to entitle him to any such relief as equitably sought and prayed for, or any other relief from or against these defendants, or either of them, in that said bill of complaint [25] as amended shows upon its face that said plaintiff is not entitled to the relief prayed for, or to any relief.

II.

The defendants move to dismiss said bill for uncertainty, in this, to wit, that the said bill of complaint as amended fails to show whether the plaintiff is seeking to recover by virtue of an action at law therein, to be enforced by writ of mandate of this court, or whether he alone seeks the interposition of the equitable jurisdiction of this court for the purpose of restraining the alleged wrongful acts in said bill of complaint as amended attempted to be set forth.

III.

Defendants further move to dismiss said bill for the reason that said bill sets forth, or attempts to set forth, two separate causes of action, one an action at law for recovery of the money due upon the alleged defaulted coupons owned by plaintiff, the judgment of the Court thereon to be enforced by a writ of mandate; the other, an action in equity, to

restrain the defendants from doing or performing any of the acts complained of in said bill of complaint, as amended.

IV.

Defendants, and each of them, further move to dismiss said complaint, for the reason that the said plaintiff has a plain, speedy and adequate remedy at law, to wit, an action at law against the defendant, Emmett Irrigation District, for judgment upon the defaulted coupons owned by said plaintiff, including the right to enforce any judgment secured therein by writ of mandate issued by this court.

V.

Defendants further move to dismiss the bill of complaint herein as amended, for the reason that the defendants, W. H. Shane, N. B. Barnes and E. J. Reynolds, as Directors of said Irrigation District, have been improperly joined as defendants [26] with said Emmett Irrigation District and said R. B. Shaw as Treasurer of said District.

VI.

Defendants further move to dismiss the said complaint as amended, for the reason that it is alleged in said complaint as amended, that the bonds of said district, described in said complaint as amended, to the amount of nine hundred thousand dollars or upwards have been issued and are now outstanding in the hands of purchasers thereof, who reside mostly, if not entirely, in other States than the State of Idaho, and that plaintiff herein is the owner of but a portion of the said bonds, to wit, the amount of \$101,000.00, and that the Treasurer of the said

District is now in possession of the interest fund belonging to the said District and collected for paying the taxes on the coupons of said bonds and all of them, and the owners and holders of all the said bonds issued and outstanding as aforesaid, save and except said plaintiff, are not made parties to this action, and said suit is therefore defective for want of or nonjoinder of parties.

WHEREFORE, defendants pray that said bill of complaint as amended be dismissed and that they, or either of them, be not required to answer herein.

J. M. THOMPSON,

Residing at Caldwell, Idaho, and

FREMONT WOOD and

DEAN DRISCOLL,

Residing at Boise, Idaho, Solicitors for Defendants.

Service of the foregoing motion, by copy, at Boise, Idaho, acknowledged this 25th day of June, 1914, and consent is hereby given that the same may be filed on the 26th day of June, 1914, [27] to the same effect as if filed within the time limited by the former stipulation of the parties.

RICHARDS & HAGA and

McKEEN F. MORROW,

Residing at Boise, Idaho,

Solicitors for Plaintiff.

[Endorsed]: Filed June 26, 1914. A. L. Richardson, Clerk. [28]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation et al.,

Defendants.

**Decision on Motion to Dismiss Complaint as
Amended.**

Aug. 15, 1914.

J. H. RICHARDS, OLIVER O. HAGA, and
McKEEN F. MORROW, Solicitors for
Plaintiff.

J. M. THOMPSON, FREMONT WOOD, and
DEAN DRISCOLL, Solicitors for Defend-
ants.

DIETRICH, District Judge:

By their motion the defendants question the sufficiency of the facts stated by plaintiff to entitle him to equitable relief. It is shown by the bill and the amendments thereto that the defendant Emmett Irrigation District was duly organized under the laws of the State of Idaho, and that its board of directors, at a meeting regularly called for that purpose, determined that it would require \$1,100,000.00 to purchase and construct the necessary irrigation works to supply the needs of the land owners of the district. In the manner prescribed by law the question whether or not bonds to that amount should

be issued was submitted to the electors of the district; the vote was favorable. Thereupon, in a special proceeding provided by statute, in the District Court of Canyon County, Idaho, a decree was duly given and made adjudging that the District [29] had been regularly organized, and that the issuance of the bonds had been properly authorized. This decree was later affirmed by the Supreme Court of the State.

It is further shown that subsequently bonds in excess of \$900,000.00 of the issue so authorized were actually sold and delivered by the defendant to various purchasers, and that the plaintiff is an innocent holder for value of fifteen of such bonds, of the par value of \$1,000.00 each, and one hundred and seventy-two, of the par value of \$500.00 each, aggregating \$101,000.00. The form of bonds is fully pleaded, and it appears therefrom that they bear interest at the rate of six per cent per annum, payable semi-annually, on the 1st day of January and the 1st day of July of each year, the interest being covered by coupons of the usual form. It is further shown that after the issuance and sale of the bonds the defendant District caused the amount thereof to be apportioned over each tract and subdivision of land in the District in proportion to the benefits to be received from the construction of the irrigation works, all as provided in Section 2399 of the Revised Codes of Idaho, which said apportionment was afterwards duly approved and confirmed by the District Court of the Seventh Judicial District of Idaho in and for Canyon County.

All coupons prior to those maturing January 1, 1914, were paid, but no part of the interest due January 1, 1914, and there is due the plaintiff on account thereof the sum of \$3,030.00. It further appears that on or about October 22, 1913, at a regular adjourned meeting of the board of directors of the District, an assessment was levied for the purpose of meeting the interest maturing January 1, 1914, and July 1, 1914, upon the outstanding bonds, including those of the plaintiff, amounting to \$55,000.00, and that all the preliminary steps required by law were taken for the collection of this assessment, and that a large number of land [30] owners and taxpayers of the District paid the taxes so levied against their several lands. On January 1, 1914, the plaintiff caused to be presented to the treasurer of the District his interest coupons maturing upon that date, aggregating \$3,030.00, with demand for payment thereof, but notwithstanding the fact that he had in his possession more than that amount of money, the treasurer declined to pay the coupons or any of them. It is further alleged that the defendants wrongfully decline to apply the moneys so collected from taxpayers to the payment of said interest, and that unless they are restrained from so doing they will either return the money to the persons from whom the same was collected, or will divert it from the interest fund and apply it to other purposes. In this connection, however, it is not alleged that any of the money so collected has been returned or has been diverted, or that there has been any threat to so return or divert the same, nor are

any facts stated upon which to found a reasonable belief that such action is contemplated or will be taken.

It is further shown that the entire issue of bonds will mature serially, commencing on the 1st day of January, 1922, and extending over a period of ten years; and in that connection it is alleged, upon the plaintiff's information and belief, without, however, a showing of any facts or circumstances upon which such information and belief are based, that default will be made by defendants from time to time as each installment of interest becomes due, and that therefore numerous suits by the plaintiff and other bondholders will be required to enforce their rights. It is also alleged that it would be impracticable and unjust to the holders of the bonds to require them to wait until the principal of the bonds matures before bringing suit to collect the interest.

It is further averred upon information and belief that the individual defendants, officers of the Irrigation District, are counseling and advising the taxpayers to decline to pay their taxes, [31] and are making no effort to collect the same, and are encouraging litigation against the bondholders, with a view of ultimately repudiating the payment of both the principal and interest of the bonds, and that by such action the market value of the bonds is being depreciated. The plaintiff further asserts his belief that the defendants will, by their failure to take the necessary steps to enforce the payment of taxes, permit those who have not already paid to escape payment. It is further shown that the defendants sometimes

contend that about one-fifth of the outstanding bonds were issued without any, or, at least, without adequate consideration, but do not specify or identify the particular bonds so charged to have been improperly issued, and that by some of the defendants statements have been repeatedly made that the District will not pay the bonds unless compelled so to do by decree of Court, and that it is not unlikely that numerous suits will be instituted by taxpayers attacking the validity of the bonds, and that one such suit has already been instituted in one of the State courts by a taxpayer, against the treasurer of the District, to restrain him from collecting any tax against such taxpayer for the payment of interest on the bonds. Such inconsiderable detail is the showing made by the bill, together with the amendments thereto. There is a prayer that the defendants be enjoined from diverting the funds collected and from denying the validity of the bonds, or encouraging or instigating others to do so, and also that they be required to pay the bonds and coupons, in accordance with the terms thereof, and to take such steps as are authorized by law to procure the necessary funds therefor.

The contention of the defendants is that the plaintiff has an adequate remedy at law, and that therefore the Court, upon the equity side, is without jurisdiction. It is thought the contention must be sustained. If we could properly act upon the [32] general assertion of mere conclusions and inferences and of the suppositions and beliefs of the plaintiff, a different view might be taken; but when analyzed the facts

pleaded are deemed to be insufficient upon which to base equitable jurisdiction. The usual course in such cases is for the holder of the bonds to bring an action at law to recover the amount due upon his interest coupons, and if thereupon the debtor declines or fails to take the necessary steps to procure the fund, or, if such fund exists, to apply it to the payment of the interest, relief can be granted in a *mandamus* proceeding. It is not apparent why this course would not furnish a complete and adequate remedy in the present case. The bonds are a lien upon all the property in the District. It is not alleged that the property is being wasted or that it is deteriorating or is likely to deteriorate in value. It is averred that a small fund has accumulated in the treasury which is properly applicable to the payment of the interest, and the belief is expressed that it will be diverted, but, as already suggested, there is no allegation of any threat so to do, or of any actual past diversion, and no real basis for such a belief is disclosed. The probability of a multiplicity of suits is also asserted, but such danger does not appear to be imminent. There is no reason for concluding that if in an action at law upon the coupons the Court holds that the plaintiff is the rightful owner of bonds, the District will in the future decline to meet interest payments as and when they fall due. Much is said about the influence upon the market value of the bonds of the agitation against their payment, and of the statements circulated to the effect that they were improperly issued, but it is not at all improbable that a judgment in an action at law, favorable to the

plaintiff, would be quite as effective in quieting such agitation and in establishing the market value of the bonds as a decree of a court of equity. At least no reasons are put forward for anticipating [33] that the defendants will be inclined to be contumacious or disposed to harass the plaintiff in the enjoyment of any rights which may be established in an appropriate action. In the absence of a showing to the contrary, we must assume that the defendants are acting in good faith and are not averse to having the controversy tried out once for all in a court of law, where they may assert their constitutional right of having issues of fact determined by a jury. In *Vickrey vs. Sioux City*, (104 Fed. 164), *Farson vs. Sioux City*, (106 Fed. 278), *Burlington Savings Bank vs. Clinton*, (106 Fed. 269),—from the district of Iowa,—and *Olmstead vs. City of Superior*, (155 Fed. 172), from the district of Wisconsin,—a rule seems to be recognized which in a measure tends to support the jurisdiction contended for by the plaintiff. But in those cases the laws governing the relations of the parties were not the same, and in the *Olmstead* and *Vickrey* cases at least the facts were quite dissimilar. If we assume that the defendants are trustees for the bondholders, it is to be borne in mind that there has been no diversion or threatened diversion or misapplication of any trust funds, and there is no accounting to be had, and apparently the defendants do not repudiate their liability to rightful bondholders, but deny only that the plaintiff is such a holder of the bonds of which he has possession. If the defendants were misappro-

priating or threatening to misappropriate funds which are properly applicable to the payment of the plaintiff's coupons, it is not improbable that a court of equity would, upon a proper showing, afford all necessary protection, but it will not, upon the pretext of giving such relief, in advance of any real need therefor, draw to itself the whole of a controversy, the principal, if not the only substantive, issue in which may without difficulty or delay be tried out in an action at law; that would be to treat too lightly the fundamental right of a jury trial. I only assume, and do not decide, that the defendants are trustees for the bondholders. The bonds are the unconditional [34] obligations of the Irrigation District, and to that extent at least the relation between it and the plaintiff is that of debtor and creditor. However, an extended discussion of this question is not required at the present juncture. It will be time enough to consider to what extent trust features are involved when it is shown that the dissipation of the funds which have been collected, or their diversion, is a real peril.

The view we have taken is thought to be directly supported by the opinion of Judge Sawyer in *Hau-meister vs. Porter, Treasurer* (Cal.), 21 Fed. 355, and in a measure by the principles enunciated by Judge Ross in *Marra vs. San Jacinto P. V. Irrigation District* (Cal.), 131 Fed. 780. See, also, *Shepherd vs. Tulare Irr. District*, 94 Fed. 1; s. c., 185 U. S. 1; *Thompson vs. Perris Irr. District*, 116 Fed. 769; s. c., 122 Fed. 860.

It follows that the motion must be sustained, and

unless within four days from the date hereof the plaintiff by written notice filed with the clerk signifies his desire that the cause be transferred to the law side of the court, as authorized by General Equity Rule 22, a decree will be entered dismissing the bill.

[Endorsed]: Filed Aug. 15, 1914. A. L. Richardson, Clerk. [35]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. —.

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation et al.,

Defendants.

Decree Dismissing Bill.

The Court having rendered its decision herein on the 15th day of August, 1914, sustaining defendants' motion for dismissal of plaintiff's amended complaint, unless within four days from said date the plaintiff by written notice, filed with the Clerk of this Court, signified his desire that the cause be transferred to the law side of the court, as authorized by General Equity Rule No. 22; and it now appearing to the Court that plaintiff has not filed such written notice, or otherwise signified his desire that the cause be transferred to the law side of the court.

IT IS THEREFORE ORDERED AND DECREED that defendants' motion to dismiss plaintiff's bill as amended be sustained, and plaintiff's bill as amended hereby is dismissed out of this Court, with costs to defendants.

FRANK S. DIETRICH,
Judge.

Dated, September 2, 1914.

[Endorsed]: Filed Sept. 2, 1914. A. L. Richardson, Clerk. [36]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. —.

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal Corporation, W. H. SHANE, N. B. BARNES, and E. J. REYNOLDS, as Directors, and R. B. SHAW, as Treasurer of said EMMETT IRRIGATION DISTRICT,

Defendants.

Assignment of Errors.

AND NOW COMES the plaintiff, J. Paul Thompson, and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above cause on the 2d day of September, A. D. 1914, says that said decree, made and entered as aforesaid, is erroneous

and unjust to this plaintiff, and particularly in this:

1. Because the said Court erred in holding and deciding that plaintiff had an adequate remedy at law.

2. Because the said Court erred in holding and deciding that the facts alleged in plaintiff's bill, as amended, are insufficient upon which to base equitable jurisdiction.

3. Because said Court erred in holding and deciding that it was not apparent from said bill as amended that an action at law would not furnish a complete and adequate remedy in said cause.

4. Because said Court erred in holding and deciding that the allegations in plaintiff's bill as amended were not sufficient to justify a conclusion that the interest collected [37] and now in the possession of the Treasurer of said District would not be diverted, and in holding and deciding that it was necessary to show either an actual diversion of such interest fund or further facts justifying the conclusion that there would be a diversion before plaintiff would be entitled to equitable relief.

5. Because said Court erred in holding and deciding that there was no such probability of a multiplicity of suits as to justify a court of equity to take jurisdiction of said cause.

6. Because said Court erred in holding and deciding that there was no reason for concluding that, if in an action at law upon the coupons the Court should hold in favor of plaintiff, that the defendants would in the future decline to meet other interest payments as and when they fall due.

7. Because said Court erred in holding and deciding that it was not improbable that a judgment in an action at law favorable to the plaintiff would be as effective in quieting the agitation pleaded in the bill as amended and in establishing the market value of the bonds, as a decree of a court of equity, and in declining to take jurisdiction by reason thereof.

8. Because said Court erred in holding and deciding that the defendants do not repudiate their liability to rightful bondholders, but deny only that the plaintiff is such holder of the bonds of which he has possession.

9. Because the said Court erred in ordering and decreeing that plaintiff's bill as amended did not set forth sufficient facts to entitle plaintiff to relief in equity.

10. Because the said Court erred in ordering and decreeing that plaintiff's bill as amended be dismissed. [38]

WHEREFORE, plaintiff prays that said decree be reversed and set aside, and the District Court directed to overrule defendants' motion to dismiss, and to proceed with the hearing of said cause according to law and the rules of procedure governing the disposition of equitable causes.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Plaintiff.

Residence: Boise, Idaho.

Service of the foregoing Assignment of Errors,

and receipt of copy thereof admitted this 3d day of September, 1914.

WOOD & DRISCOLL,
J. M. THOMPSON,
Solicitors for Defendants.

[Endorsed]: Filed Sept. 3, 1914. A. L. Richardson, Clerk. [39]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. —.

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation, W. H. SHANE, N. B. BARNES,
and E. J. REYNOLDS, as Directors, and R.
B. SHAW, as Treasurer of said EMMETT
IRRIGATION DISTRICT,

Defendants.

Petition for Appeal.

AND NOW COMES J. Paul Thompson, the above-named plaintiff, and, conceiving himself aggrieved by the decree made and entered on the 2d day of September, A. D. 1914, in the above-entitled cause, doth hereby appeal from said order and decree dismissing his bill of complaint as amended, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith; and said plaintiff prays that this his appeal may be allowed, and that Citation

issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Plaintiff.

Residence: Boise, Idaho. [40]

Order Allowing Appeal.

And now, to wit, on this 3d day of September, 1914, it is ORDERED that the foregoing petition be granted, and that the appeal be allowed as prayed for, and that plaintiff file a bond on appeal in the sum of Five Hundred Dollars (\$500.00) with good and sufficient security, to be approved by the Court.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed Sept. 3, 1914. A. L. Richardson, Clerk. [41]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. —.

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation, W. H. SHANE, N. B. BARNES
and E. J. REYNOLDS, as Directors, and
R. B. SHAW, as Treasurer of Said EMMETT
IRRIGATION DISTRICT,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, J. PAUL THOMPSON of the City of
Cleveland, State of Ohio, as principal in this obligation,
and the BOISE TITLE AND TRUST COMPANY, a corporation with its principal place of
business at Boise, Idaho, as surety, are held and
firmly bound unto the above-named defendants in
the sum of Five Hundred Dollars (\$500.00), for the
payment of which, well and truly to be made, we
bind ourselves and each of us, our and each of our
heirs, executors, successors and assigns, jointly and
severally, firmly by these presents.

Sealed with our seals and dated this 3d day of
September, 1914.

The condition of this obligation is such, that
WHEREAS, the above-named J. Paul Thompson
has prosecuted an appeal to the United States Cir-

cuit Court of Appeals for the Ninth Circuit to reverse the order and decree made and entered in the above-entitled suit in the District Court of the United States for the District of Idaho, Southern Division, on the 2d day of September, 1914. [42]

NOW, THEREFORE, if the above-named plaintiff and appellant, J. Paul Thompson, shall prosecute his said appeal to effect and answer all costs if he shall fail to make his said plea good, then the above obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF, the said Principal has caused his name to be hereunto subscribed by one of his solicitors, and the said Boise Title and Trust Company, as Surety, has caused its name to be hereunto subscribed by its duly authorized officers, and its corporate seal affixed.

(Signed) J. PAUL THOMPSON,

By OLIVER O. HAGA,

His Solicitor.

BOISE TITLE AND TRUST COMPANY,

By S. H. HAYS,

President.

[Seal] Attest: (Signed)

RAYMOND S. HOOVER,

Secretary.

Approved September 3d, 1914.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed Sept. 3, 1914. A. L. Richardson, Clerk. [43]

Citation [on Appeal (Original)].

THE UNITED STATES OF AMERICA,—ss.
To Emmett Irrigation District and to W. H. Shane,
N. B. Barnes, and E. J. Reynolds, as Directors,
and R. B. Shaw, as Treasurer of Said Emmett
Irrigation District:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty (30) days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein J. Paul Thompson is plaintiff and you, the Emmett Irrigation District and W. H. Shane, N. B. Barnes and E. J. Reynolds as directors, and R. B. Shaw as treasurer of said Emmett Irrigation District, are defendants, to show cause, if any there be, why the judgment, order or decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK S. DIETRICH, United States District Judge for the District of Idaho, this 3d day of September, A. D. 1914, and of the Independence of the United States the one hundred and thirty-ninth year.

FRANK S. DIETRICH,
District Judge.

[Seal]

Attest: A. L. RICHARDSON,
Clerk. [44]

Service of the foregoing Citation and receipt of a copy thereof admitted this 3d day of September, 1914.

WOOD & DRISCOLL,
J. M. THOMPSON,

Solicitors for Defendants. [45]

[Endorsed]: No. 479. In the District Court of the United States for the District of Idaho, Southern Division. J. Paul Thompson, Plaintiff, vs. Emmett Irrigation District et al., Defendants. Citation. Filed Sept. 3, 1914. A. L. Richardson, Clerk.

Return to Record.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [46]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States for the
District of Idaho, Southern Division.*

J. PAUL THOMPSON,

Plaintiff,

vs.

EMMETT IRRIGATION DISTRICT, a Municipal
Corporation, W. H. SHANE, N. B. BARNES
and E. J. REYNOLDS, as Directors, and
R. B. SHAW, as Treasurer of Said EMMETT
IRRIGATION DISTRICT,

Defendants.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages numbered from 1 to 47, inclusive, contain true and correct copies of the Complaint, Amendment to Complaint, Motion to Dismiss Bill of Complaint as Amended, Decision on Motion, Decree Dismissing Bill, Assignment of Errors, Petition for Appeal, Order Allowing Appeal, Bond on Appeal, Original Citation, Return to Record and Clerk's Certificate, which together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$27.80 and that the same has been paid by the Appellant.

Witness my hand and the seal of said court, affixed
at Boise, Idaho, this 4th day of September, 1914.

[Seal]

A. L. RICHARDSON,

Clerk. [47]

[Endorsed]: No. 2479. United States Circuit
Court of Appeals for the Ninth Circuit. J. Paul
Thompson, Appellant, vs. Emmett Irrigation Dis-
trict and W. H. Shane, N. B. Barnes and E. J. Rey-
nolds, as Directors, and R. B. Shaw, as Treasurer of
Emmett Irrigation District, Appellees. Transcript
of Record. Upon Appeal from the United States
District Court for the District of Idaho, Southern
Division.

Received and filed September 8, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.